

1 be stricken. Any further objection?

2 MR. COHEN: Yes. And again later on paragraph 15,
3 six lines from the bottom, the sentence beginning "On other
4 occasions she tells me that she has to check with the Board."
5 That -- I don't -- if it's coming in for the truth of the
6 proposition to serve him, obviously he's incompetent and that
7 would be --

8 JUDGE CHACHKIN: Well, he's only testifying about
9 what she tells him.

10 MR. COHEN: Very good, as long as that's understood.

11 JUDGE CHACHKIN: Yeah, it's certainly not the truth
12 of the matter, the fact that she tells him something.

13 MR. COHEN: I mean, I wouldn't want to see a finding
14 that she does check with -- Mrs. Duff checks with the Board,
15 and this is the citation for this.

16 JUDGE CHACHKIN: Well, it's only his -- what he's
17 being told by Mrs. Duff.

18 MR. COHEN: Uh-huh.

19 JUDGE CHACHKIN: It doesn't -- it's not being
20 received as a truth of the matter, whether in fact this is
21 what occurs.

22 MR. COHEN: Very good, Your Honor. Your Honor, now
23 we turn to page 20.

24 MR. SCHONMAN: Your Honor.

25 MR. COHEN: Paragraph 20.

1 JUDGE CHACHKIN: Wait a minute.

2 MR. COHEN: Maybe there's something before that, the
3 Bureau has.

4 MR. SCHONMAN: On paragraph 16, page 11. The next
5 to the last sentence, NMTV has the legal right to reject TBN
6 programming. And it continues, etc. The Bureau would object
7 because this individual doesn't have a competence to make
8 legal conclusion. I don't believe he's an attorney.

9 JUDGE CHACHKIN: Well, the question is if he's
10 familiar with the agreements or not, then if he's read the
11 agreement, I guess you could question him on that basis for
12 his claim that they had the legal right. Again, this does not
13 establish that in fact they have the legal right, it's merely
14 his belief that they have the legal right. So it's not being
15 received for the truth of the matters, the agreements
16 themselves will establish whether they have the legal right.

17 MR. TOPEL: And the agreement is in the record.

18 JUDGE CHACHKIN: That's right. His belief merely is
19 -- it doesn't establish the fact whether they have the
20 agreements. You certainly can question him on the basis of
21 his belief. Objection is overruled. Any further objection?

22 MR. COHEN: Yes. On paragraphs 20 and 21 should be
23 looked at together, and that is I raise the materiality
24 objection, Your Honor, the detail here is excruciating. The
25 issue is when they began programming them. I'm willing to

1 recognize that Mr. Topel spoke eloquently to that point
2 yesterday. But the reasons don't -- the reasons are not
3 material to the extent that they're set forth in these two
4 paragraphs. There's too much detail.

5 MR. TOPEL: Your Honor, I believe Your Honor ruled
6 eloquently yesterday as well, this is clearly relevant on the
7 basis that you accepted it yesterday.

8 JUDGE CHACHKIN: As long as he's testifying about
9 his knowledge, and it doesn't go beyond that.

10 MR. COHEN: Very well, Your Honor.

11 JUDGE CHACHKIN: I'll overrule the objection.
12 Further objection?

13 MR. COHEN: Yes. 24, Your Honor, we're now, -- I
14 understand your ruling yesterday, and of course I accepted
15 that, the relevance of programming. But if you read paragraph
16 24, this is no longer programming.

17 The witness is now getting into the policy
18 concerning equal employment, putting it on the wall right next
19 to the front door, placing pictures of directors on the wall
20 close to the front door. That -- that material is not
21 relevant to the control issue. That is nothing -- this
22 material has nothing to do with the designated issues. This
23 is not programming now.

24 MR. TOPEL: Your Honor, the testimony is offered to
25 stand for the super -- Mrs. Duff's supervisory role. The

1 bonafeties of Mrs. Duff's supervisory role. There is
2 testimony as to Mrs. Duff's instructions as to Mr. McClellan,
3 and the purpose of the company, and this is an indication of
4 who Mr. McClellan works for. And that Mrs. Duff does in fact
5 have very legitimate control over National Minority
6 Television.

7 MR. COHEN: Well, Your Honor, that's the greatest
8 stretch I've heard all week. I submit to you no reasonable
9 person would view that paragraph and conclude that. It simply
10 doesn't say what Mr. Topel says it says.

11 MR. TOPEL: "As I took Mrs. Duff's explanation very
12 seriously and proceeded --"

13 JUDGE CHACHKIN: Well, I'll overrule the objection
14 at this time, it's established that Mr. McClellan did this on
15 his own without any instructions from Mrs. Duff, and not
16 pursuant to her authority, supervisory authority, then I'll
17 strike it. It's not clear from this paragraph that he did
18 these things at the direction of Mrs. Duff, or he took these
19 things on his own. So I'll receive it at this time.

20 MR. COHEN: Your Honor, paragraph 25 is using the
21 word -- and even given the frame of reference that you
22 described, I don't think paragraph 25 meets that criterion and
23 I respectfully ask you to read it carefully.

24 MR. SCHONMAN: The Bureau concurs.

25 MR. TOPEL: Your Honor, I'm not trying to argue --

1 MR. COHEN: -- the churches not only provide
2 services like tutors for struggling students --

3 JUDGE CHACHKIN: Mr. Topel is not going to --

4 MR. TOPEL: Yeah, I am not going to argue, this is
5 under the umbrella of things that you have ruled on. It is
6 our position --

7 JUDGE CHACHKIN: All right.

8 MR. TOPEL: -- this is -- that these are the
9 minority oriented activities of the -- we've stated our
10 reasons why we --

11 JUDGE CHACHKIN: All right. Paragraph 25 is
12 stricken. Go ahead.

13 MR. COHEN: And paragraph 26 falls within exactly,
14 squarely the same rationale, Your Honor. This deals with
15 recruitment, hiring, training. This is not --

16 JUDGE CHACHKIN: Parts of it, there's some
17 additional stuff. I don't know.

18 MR. COHEN: But my point, Your Honor, is it doesn't
19 -- it's not relevant, it doesn't tie in directly to the
20 designated issues in this proceeding, which is a control
21 issue, and abusive processes.

22 MR. TOPEL: Your Honor, I'm not sure if this is the
23 right paragraph to raise the point, but I do have a very
24 different argument on the relevance of the station's staffing
25 under the defacto control issue. Let me see if this is the

1 appropriate paragraph to raise it.

2 MR. COHEN: Well, I have an argument on that too,
3 Your Honor, if you want to hear it.

4 JUDGE CHACHKIN: Let's -- what's your argument, Mr.
5 Topel?

6 MR. TOPEL: Your Honor, as you noted, and as the
7 case law indicates, the issue of personnel is one of the
8 relevant considerations under FCC Defacto Control Law. And
9 the Commission has specifically dealt with the issue of
10 Defacto Control with respect to what are called local
11 marketing agreements, or LMAs.

12 What the Commission has ruled with respect to an
13 LMA, is that one party can broker or purchase all the time on
14 a station as long as the licensee itself retains this staffing
15 --, that there is a part time management employee who is based
16 at the station, a one full time administrative employee.

17 JUDGE CHACHKIN: What is the -- this is not an LMA,
18 there's no contention this is an LMA.

19 MR. TOPEL: But L -- Your Honor, my point is that --

20 JUDGE CHACHKIN: So what are you talking about an
21 LMA for?

22 MR. TOPEL: Because -- Your Honor, because under
23 LMA, the Commission has said that a staff far less than the
24 staff that National Minority has in Portland, which has many
25 full time management people. The Commission has also said

1 that it's proper for two parties to share engineering
2 services, yet National Minority Television has its own Chief
3 Engineer, it's own operators at the station.

4 The point is that the Commission has held that a
5 minimal staffing level under an LMA is not a -- is not a
6 defacto control, the licensee having relinquished control.
7 The fact that National Minority has -- has a much larger staff
8 of its own personnel running from management through Chief
9 Engineer, through staff engineers and operators, through a
10 public affairs department that does it's own local
11 programming.

12 This station does far more than the minimum that the
13 FCC has ruled is not a defacto control and so we think that
14 having that evidence in the record is going to be relevant to
15 this position of whether what National Minority has done as a
16 defacto control.

17 JUDGE CHACHKIN: What is relevant, it seems to me --

18 MR. COHEN: I'd like to know, Your Honor --

19 JUDGE CHACHKIN: -- is who hired personnel, who
20 directed them, where did they come from. We're not talking
21 about an LMA here, exactly.

22 MR. TOPEL: All right.

23 JUDGE CHACHKIN: Now, that's relevant. If these
24 personnel were hired by NMTV's Board, on their own, and they
25 take -- they're supervised by NMTV's Board on their own,

1 obviously that's relevant. But the fact that they have a full
2 staff, I don't know the facts there --

3 MR. TOPEL: Well --

4 JUDGE CHACHKIN: -- which came from TBN certainly is
5 relevant. It's relevant for different reasons than it is
6 within LMA.

7 MR. TOPEL: Well, Your Honor, let me say the full
8 staff did not come from TBN.

9 JUDGE CHACHKIN: I don't know what the facts are,
10 I'm just saying --

11 MR. TOPEL: I understand.

12 JUDGE CHACHKIN: -- that's what's relevant.

13 MR. TOPEL: I understand, Your Honor, and the
14 testimony carries forward who has responsibility for hiring
15 the staff. The point that I was concerned about is that since
16 all of the testimony about the minority efforts of the station
17 have been excluded, that it was going to be an objection that
18 testimony about the hiring of minority employees is the per se
19 irrelevant, because it relates to minority employees.

20 I want to do -- be able to address that, because the
21 issue of what the station's staff is and who hired it, has a
22 different area of relevance which Your Honor has indicated,
23 what staff is there and who hired them, and who did they
24 report to.

25 JUDGE CHACHKIN: Nobody's questioned that's relevant

1 to the question of control.

2 MR. TOPEL: That's fine. I didn't want the two
3 issues to get crowded because again, because Mr. Cohen is
4 starting to object to a paragraph that related to hiring of
5 employees. And that paragraph may have been directed to the
6 Minority Service Issue, but nonetheless, the hiring of
7 employees and how that occurred is relevant.

8 JUDGE CHACHKIN: Yes. But when you have sentences
9 here, "Finally, as I tell people we have a serious and ongoing
10 commitment to recruit, hire, etc., etc." But it doesn't
11 identify who -- who made this commitment, whether it was the
12 decision of the Board, whose decision it was, it's useless.

13 MR. COHEN: That's my objection.

14 MR. TOPEL: But Your Honor, his testimony --

15 JUDGE CHACHKIN: Nothing is tied into the question
16 of control. You have general statements hanging out there,
17 and I guess somewhere at the end of this we'll get it all put
18 together, all the pieces of the puzzle, and somewhere perhaps
19 we'll be able to make some sense out of this. But right now,
20 each one is speaking, and without tying it into control.

21 MR. TOPEL: Well, Your Honor, there are many
22 paragraphs in this testimony along, not regarding others but
23 where Mr. McClellan describes his hiring and what he was
24 instructed to do to make an effort, to go out and hire
25 minorities, he was instructed by Mrs. Duff to do that, that's

1 in his testimony.

2 JUDGE CHACHKIN: Fine. If it says that. But look
3 at --

4 MR. TOPEL: It does say that.

5 JUDGE CHACHKIN: -- paragraph 26, you don't see any
6 indication there of where all this came from.

7 COURT REPORTER: Excuse me, I have to change the
8 tape.

9 JUDGE CHACHKIN: Yes.

10 (Off the record.)

11 (Back on the record.)

12 COURT REPORTER: You can go ahead.

13 JUDGE CHACHKIN: That's the difficulty. One
14 shouldn't have to grapple with earlier paragraphs to determine
15 if this particular paragraph is relevant. Each paragraph
16 should be relevant on its own, by referring in some way to the
17 control issue. I mean there's nothing in this paragraph would
18 indicate that this deals with the control issue, it deals how
19 the station operated, but it doesn't deal with who made the
20 decisions with respect to how the station operated. And how
21 were these decisions made. It just states what the station
22 did.

23 Now, what I -- I guess maybe there are paragraphs
24 somewhere else where it deal with this subject, but this is
25 what we have here. Each one of these individuals is speaking

1 and you can't tell from the paragraphs, and each individual's
2 testimony whether it relates to control, or whether it relates
3 just to the fact that the station had minority programming or
4 whatever they had. Or employees.

5 You can't tell, and the issue we're concerned about
6 with is I agree with you that personnel is relevant, program
7 practices are relevant, all of these things are relevant, but
8 only in the sense of who made these decisions. Where did it
9 come from. Not by itself, it's relevant.

10 MR. TOPEL: I understand, Your Honor.

11 MR. COHEN: That's exactly how I read it, Your
12 Honor.

13 MR. TOPEL: I understand it, and as I indicated in
14 my predicate, I'm not sure this was the right paragraph to
15 raise the issue. Because this paragraph was presented with a
16 view towards the other theory of relevance that TBF had, which
17 has been rejected. But I just wanted to make -- to alert Your
18 Honor, as we got into the issue of personnel, if all the
19 personnel testimony was going to be objected to on the ground
20 that what was -- what the station did subsequently is
21 irrelevant, I wanted to indicate to Your Honor, that we have
22 an additional argument on that point.

23 MR. COHEN: Your Honor, I -- if I could just be
24 heard one second.

25 JUDGE CHACKIN: Yes.

1 MR. COHEN: I think that if you will spend two
2 minutes looking at Exhibit 110 through 115, which are the
3 testimony of the minority employees, you'll see that there's
4 no tying in whatsoever to the control issue. And you need to
5 look at these documents now, because that's in the context of
6 your remark.

7 These exhibits concerning the minority employees
8 have nothing to do with the control issue.

9 MR. TOPEL: Well, Your Honor, Mr. Cohen can object
10 to those exhibits when we get to them.

11 MR. COHEN: Well, I think the Judge should see them
12 now, because they're very relevant to what's before the Judge
13 at this minute. There's no way of connecting the Board of
14 Directors at NMTV to these employees.

15 JUDGE CHACHKIN: Well, that's what I my difficulty
16 is. The responsibility was to tie it into control. And all
17 we have here is general paragraph after paragraph, without
18 tying it into controls.

19 MR. TOPEL: The cross references aren't included,
20 but Mrs. Duff has testified as to her responsibility over
21 hiring decisions. Mr. McClellan has testified what Mrs. Duff
22 has told him to do about hiring decisions, and the remainder
23 of his testimony, testifies -- addresses what he did about
24 hiring decisions. And it all ties together into a package of
25 a station, a minority -- a station that we feel was of very

1 proper use of the Commission's minority exception.

2 MR. COHEN: I did not dispute that, Your Honor.

3 JUDGE CHACHKIN: That's my difficulty. You want to
4 talk about the Station's program in a vacuum. I'm interested
5 only in the programming and personnel practices insofar as it
6 relates to control. And you've written this thing, or whoever
7 has written this thing with a view to show this station --
8 what the station has done, satisfies the Commission's ends in
9 establishing minority policy, but that's not the purpose of
10 this hearing.

11 MR. COHEN: It's irrelevant.

12 MR. TOPEL: I understand that. I understand that
13 and --

14 JUDGE CHACHKIN: And the difficulty is trying to now
15 reconfigure this so it deals with the subject matter which is
16 relevant to this hearing, namely the question of control.

17 MR. TOPEL: And there is testimony about who is
18 responsible for hiring these employees.

19 JUDGE CHACHKIN: All right.

20 MR. TOPEL: And how it came about.

21 JUDGE CHACHKIN: But it's not in this paragraph.

22 MR. COHEN: I think each paragraph should stand on
23 its own, Your Honor, and it should be tied in and connected,
24 but I don't think I dispute my friend, Mr. Topel's contention
25 that this is somewhere else. I don't think it is somewhere

1 else. And I think that we shouldn't have to look for it even
2 if it was somewhere else. I think that the paragraph should
3 stand -- each paragraph should stand on its own, and on that
4 basis, I respectfully urge you to reject paragraph 26 as
5 irrelevant.

6 JUDGE CHACHKIN: I'm going to because there's no tie
7 in to control. Then again it deals with your other theory, of
8 which we've already discussed, and which I've rejected. So
9 paragraph 26 is stricken, as irrelevant.

10 MR. COHEN: And paragraph 27, Your Honor, if you'll
11 notice, concerns employees and members of -- a statement from
12 Chris Warner, which I think you've looked at, that's clearly
13 irrelevant, there's no tie in with the control issue.

14 JUDGE CHACHKIN: Paragraph 27 will also be stricken
15 as irrelevant.

16 MR. COHEN: The same argument --

17 MR. TOPEL: Well, Your Honor --

18 MR. COHEN: -- with 28, Your Honor.

19 MR. TOPEL: -- again, I believe it is relevant under
20 Commission -- recent Commission Defacto Control Law to
21 indicate that the licensee of the station NMTV has certain
22 basic staff that the Commission requires to avoid a finding of
23 defacto control.

24 JUDGE CHACHKIN: Well --

25 MR. TOPEL: Not only does it have the minimum staff,

1 | it has way beyond that.

2 | JUDGE CHACHKIN: Well, I reject your theory of LMAs,
3 | that's a hybrid animal, it has nothing to do with the issue of
4 | control. I'm going to determine control, not on the basis of
5 | LMAs, on the basis of the precedent dealing with what
6 | constitute's control. If you wanted to have LMA status, then
7 | we'd deal with an LMA, and then we wouldn't be here in the
8 | Court room, perhaps.

9 | But that's not the situation. Rather than an LMA,
10 | we have a situation of ownership, licensee, that's not an LMA.
11 | An LMA is something less than that.

12 | MR. TOPEL: Your Honor, with all respect, the
13 | Commission's LMA decisions are Commission's precedents that
14 | deal with control. And I think that the point is that if TBN
15 | had entered into an LMA with NMTV, and done what was done
16 | here, that under Commission precedent, the Commission would
17 | not find that to be a defacto control, and in fact, TBN has
18 | done less and NMTV has done more than is permitted under the
19 | Commission's LMA principals.

20 | JUDGE CHACHKIN: Well, you can argue that to the
21 | Commission, but I don't have that before me, and I'm going to
22 | determine the case as the Commission indicates in their
23 | designation or on the basis of control decisions. All right.

24 | MR. COHEN: I object to paragraph 28 on the same
25 | basis, Your Honor.

1 JUDGE CHACHKIN: It will also be stricken, rejected
2 on the grounds of relevance.

3 MR. TOPEL: Your Honor, may I have just one second?

4 JUDGE CHACHKIN: Yes.

5 MR. TOPEL: I don't think I'm going to be arguing
6 further, but as Mr. Cohen objects, I'd like to have a second
7 to look at the paragraph.

8 JUDGE CHACHKIN: Go right ahead.

9 MR. TOPEL: I have no additional argument, Your
10 Honor.

11 MR. COHEN: 29 is not tied into control at all, Your
12 Honor.

13 JUDGE CHACHKIN: 29 is also rejected.

14 MR. TOPEL: May I have one second with that, Your
15 Honor?

16 JUDGE CHACHKIN: Yes.

17 MR. TOPEL: Your Honor, particularly the testimony
18 that relates to Tab E which is the station's filled position
19 reports. Which very directly goes to who hired people. For
20 example, Exhibit E, page 1, position full time and part time
21 air operator. Prepared by Jane Duff. Again Mrs. Duff has
22 testified that she went to court and hired the initial staff.
23 This is a direct contemporaneous report of Mrs. Duff
24 not only supervising the hiring decision, but making the
25 hiring decision.

1 JUDGE CHACHKIN: Well, then if that's the case, then
2 that will be in the record.

3 MR. TOPEL: But I don't believe the testimony about
4 these reports should therefore be stricken which is what Mr.
5 Cohen is asking. Each of these reports relates to the process
6 of who hired station personnel.

7 MR. COHEN: Your Honor, you should look at all of
8 the filled positions, because I think that Mr. McClellan
9 prepared substantial number, and I'm counting. He prepared
10 three and Mrs. Duff prepared three. So -- Excuse me, could I
11 have a minute please?

12 JUDGE CHACHKIN: Yes. There's a Mr. McClellan
13 prepared motion.

14 MR. COHEN: Yes, of course, I was in error. Mr.
15 McClellan -- Mr. McClellan prepared the --

16 MR. TOPEL: Yes.

17 MR. COHEN: And Ms. Duff prepared about three. So
18 it's a distortion to suggest that as Mr. Topel does, that Mrs.
19 Duff had her hand on this matter, and that this was all done
20 under her direct -- it was her --

21 MR. TOPEL: Your Honor --

22 MR. COHEN: That's not -- that's not what those
23 filled position reports reflect.

24 MR. TOPEL: -- it's not a distortion at all for two
25 reasons. First, the fact that Mr. McClellan hired these

1 personnel, Mr. McClellan is NMTV's station manager, he's not
2 TBN's station manager. If Dr. Crouch's name appeared on all
3 these filled position reports, I think Mr. Cohen would
4 consider them inordinately relevant.

5 In this case, an NMTV's own management employee
6 hired the personnel, and in addition there is testimony that
7 he has to report to Mrs. Duff on hiring. Mrs. Duff's
8 testimony indicates that she is the NMTV executive who makes
9 the hiring decisions, and so the record indicates that these
10 hiring practices are not TBN hiring practices.

11 MR. COHEN: Your Honor, all this report does is say
12 who prepared it, it doesn't say anything like Mr. Topel says
13 it says. This report says -- it says what it says. And what
14 Mr. Topel is reading into it, is outrageous.

15 JUDGE CHACHKIN: That's all it does say, who
16 prepared the reports, where does it say who did any hiring
17 decisions?

18 MR. COHEN: I mean, this is Mr. Topel's advocacy is
19 work, and he's a very good advocate, but you know, he's not
20 testifying.

21 JUDGE CHACHKIN: I mean his secretary could have
22 prepared these reports, I don't know what -- it has nothing to
23 do with hiring practices.

24 MR. TOPEL: Well, yes, Your Honor, it lists the
25 applicants, it lists factors that were considered, it lists

1 the person who was hired.

2 JUDGE CHACHKIN: Yeah.

3 MR. TOPEL: The reasons the person was hired.

4 JUDGE CHACHKIN: Where does it list the reasons the
5 person was hired?

6 MR. TOPEL: In the bottom left-hand corner, the
7 applicant, column applicant chosen for position, and that
8 indicates on what basis was this applicant determined to be
9 the most qualified.

10 MR. COHEN: It doesn't -- again, Your Honor, I think
11 Mr. Topel has discussed it here. It doesn't talk about who
12 hired the people, it talks about who prepared the report. The
13 point, Your Honor, I say this most respectfully, there needs
14 to be a direct tie into the control issue, the information to
15 be relevant. And clearly, that tie in is not there.

16 JUDGE CHACHKIN: What does the preparation report
17 have to do with who made the hiring decision?

18 MR. COHEN: Your Honor, it indicates the process and
19 the --

20 MR. TOPEL: It just indicates the report.

21 JUDGE CHACHKIN: Where is there any indication in
22 these reports as to who hired who?

23 MR. TOPEL: Well, I believe that a proper inference
24 from the indication --

25 JUDGE CHACHKIN: From --

1 MR. TOPEL: -- from who prepared the report --

2 JUDGE CHACHKIN: As to who hired someone?

3 MR. TOPEL: And from the testimony that Mr.

4 McClellan and Ms. Duff have given, about how hiring at the
5 station occurs, that Mr. McClellan has indicated that when he
6 hires, he's accountable to reporting to Mrs. Duff. And Mrs.
7 Duff has testified that she's the final weigh station for
8 hiring decisions.

9 JUDGE CHACHKIN: Whatever that may be, there's
10 nothing in these reports which indicates who made hiring
11 decisions. So just a report, it doesn't say who hired, it
12 just says who prepared the report. You can't infer from who
13 prepared the report, that who made the hiring decisions.

14 Now, there may be testimony elsewhere as to who made
15 these hiring decisions, but you can't find it from these
16 reports.

17 MR. TOPEL: Again, Your Honor, there is testimony
18 and if Your Honor believes it appropriate to -- I can --

19 JUDGE CHACHKIN: Where ever there is testimony by
20 any of the witnesses indicating who made these decisions, now
21 they were made. I'm not precluding you from putting it in the
22 record. But this doesn't provide that testimony. It just
23 says who these people were, and what they did. But it didn't
24 say where -- who supervised them, who hired them, who told
25 them to do what they did. That's what we're interested in.

1 MR. TOPEL: Well, your Honor --

2 JUDGE CHACHKIN: It's --

3 MR. TOPEL: -- there is testimony that when Mr.
4 McClellan was hired, Mrs. Duff gave him instructions about how
5 he should proceed in recruiting and making sure he recruits
6 minorities, and hires minorities, and it's very clear that
7 that was per instruction to him, and he is now reporting to
8 the Commission that he listens to his boss, and they went out
9 and did it, and --

10 JUDGE CHACHKIN: Well, if you say it so clear,
11 apparently Mr. Cohen doesn't believe it's so clear.

12 MR. COHEN: And I say that respectfully, your Honor,
13 I don't think it's clear at all. I think Mr. Topel who is an
14 excellent advocate, as we all know, is stretching as far as he
15 can stretch.

16 JUDGE CHACHKIN: Well, Mr. Topel is not the witness,
17 so unless he wants to take the stand, he can only advocate
18 what's in -- what the witnesses said. Yes?

19 MR. SCHONMAN: Your Honor, the Bureau has a problem
20 with the information in Tab E. The reference to Tab E is in
21 paragraph 29, and it's rather cryptic, it doesn't explain how
22 the process works, how someone is hired, when a report is
23 filled out, whether the person who did the hiring is the same
24 person who filled out a report. And I think the lack of any
25 explanation leaves us with the task of having to guess

1 | essentially what the -- how these position reports fit into
2 | the process.

3 | And I think as Mr. Cohen has suggested, that it is a
4 | stretch for us to find that -- well, it leaves us guessing how
5 | the process works, and I don't think that's --

6 | MR. COHEN: I don't think we should have to do that,
7 | Your Honor. I think the Exhibits should speak for themselves,
8 | and I don't think -- I don't think we should have to go back
9 | and read Mrs. Duff's testimony or someone else's testimony and
10 | then inferentially put it in. I think that's unfair to put
11 | that burden on my client.

12 | JUDGE CHACHKIN: Well, I'm not requiring you to do
13 | so, but the testimony by itself is not -- it's not relevant to
14 | the control issue, it will be stricken. Let's go on, I've
15 | stricken paragraph 29.

16 | MR. COHEN: I make the same argument for 30, Your
17 | Honor.

18 | JUDGE CHACHKIN: Paragraph 30 will also be stricken
19 | as irrelevant.

20 | MR. TOPEL: Your Honor, may I just have --

21 | JUDGE CHACHKIN: Yes.

22 | MR. TOPEL: -- one moment just to review what is
23 | being stricken? The one that -- I've gotten myself lost,
24 | which was the one that you just struck, Your Honor?

25 | JUDGE CHACHKIN: Paragraph 30.

1 MR. SCHONMAN: 29.
2 MR. TOPEL: 29 is what was just stricken.
3 JUDGE CHACHKIN: Yes, and I'm in the --
4 MR. TOPEL: And 30 is the one that --
5 JUDGE CHACHKIN: -- process of striking also
6 paragraph 30.
7 MR. TOPEL: There's an objection to 30.
8 JUDGE CHACHKIN: Not relevant to the question of
9 control as it reads.
10 MR. TOPEL: Your Honor, I have no additional
11 arguments.
12 JUDGE CHACHKIN: All right.
13 MR. COHEN: The same objection, Your Honor, to
14 paragraph 31.
15 JUDGE CHACHKIN: It will also be stricken as
16 irrelevant.
17 MR. COHEN: Now, 32, Your Honor, was a list of
18 Minority groups.
19 MR. TOPEL: Your Honor, I'm sorry. May I just have
20 a moment to --
21 JUDGE CHACHKIN: Yes.
22 MR. TOPEL: -- scan the paragraph that was being
23 stricken?
24 JUDGE CHACHKIN: Yes.
25 MR. TOPEL: Your Honor, I have no additional

1 argument on 31.

2 JUDGE CHACHKIN: All right. 31, it's going to go on
3 all the paragraphs.

4 MR. TOPEL: Yes, I understand that, Your Honor.

5 MR. COHEN: 32 is the same way.

6 JUDGE CHACHKIN: 32 will also be stricken as
7 irrelevant to control.

8 MR. COHEN: Can I have a minute --

9 JUDGE CHACHKIN: Yes.

10 MR. COHEN: Your Honor, I have a different objection
11 for paragraph 33.

12 JUDGE CHACHKIN: What is it?

13 MR. COHEN: The objection to paragraph 33 is that
14 the -- this is a qualitative discussion, and paragraph 33, it
15 describes the quality of the programming. And I submit to you
16 that the evidence -- that the issues in this proceeding are
17 control issues, and what's relevant is whether programming, I
18 agree whether programming was broadcast on the station that
19 was local programming, is indeed relevant. But this is a
20 qualitative analysis, and I think that is not material or
21 relevant to the control issues.

22 MR. TOPEL: Your Honor, I don't know how many
23 objections Mr. Cohen needs, I don't know if he needs a second
24 objection. We understand that this paragraph is similar to
25 the ones that you've stricken, whether it can --

1 JUDGE CHACHKIN: What's the Bureau's position with
2 respect to 33?

3 MR. SCHONMAN: Irrelevant, sir.

4 JUDGE CHACHKIN: 33 is stricken.

5 MR. COHEN: Same objection for 34, Your Honor.

6 JUDGE CHACHKIN: 34 is stricken.

7 MR. COHEN: The same objection for 35.

8 JUDGE CHACHKIN: 35 is stricken.

9 MR. COHEN: Same objection for 36.

10 JUDGE CHACHKIN: 36 is stricken.

11 MR. COHEN: Same objection to 37, and that's even
12 aggravated because this is talking about future plans.

13 JUDGE CHACHKIN: In any event, 37 is stricken.

14 MR. COHEN: The same objection to 38, Your Honor.

15 No, wait, excuse me, Your Honor, I stand corrected.

16 JUDGE CHACHKIN: What does 38 have to do with the
17 control issue?

18 MR. TOPEL: Your Honor --

19 MR. COHEN: Could I consult with --

20 MR. TOPEL: -- I have no new argument on 38.

21 JUDGE CHACHKIN: Okay.

22 MR. TOPEL: We have presented to Your Honor the
23 theory of relevance, and it's obviously not something that's
24 considered in this hearing and we'll proceed in accordance
25 with the objection. I have no new argument on paragraph 38.